SINGAPORE REPORTS.

IN THE ESTATE OF HADJI DAEING TAHIRA BINTE DAEING TEDELLEH (DECEASED), HAJI SAMSUDIN v. BADRUDDIN BIN HADJI PAPANG AND OTHERS.

[App. Civil Juris. (Murray-Aynsley, C.J., Singapore, Willan, C.J., Malayan Union and Jobling, J.) September 15, 1947]

Trusts — Charity — Feast for poor persons — Mohammedan Law.

In this case the settlor in disposing of the residue of her estate declared that the Trustees should apply it (inter alia) "to provide yearly at the date of my death in memory of my parents and my sisters and myself a feast for poor persons of the Mohammedan religion in accordance with Mohammedan custom." It was argued that this trust was not charitable and as it infringed the rule against perpetuities, it was void.

Held, that the proposed expenditure in this case was a charitable one and that the mere use of the word "feast" does not bring it outside the scope of charity.

Cases referred to :—

(1) *Kerr v. Bradley* (1923) 1 Ch. 243.

(2) *Fatimah v. Logan* 1 Kyshe 255.

CIVIL APPEAL.

S. C. Goho for the Plaintiff.

G. M. Coltart for the Trustees.

C. H. Butterfield (Crown Counsel) for the Attorney-General.

Murray-Aynsley, C. J. : — In this case the settlor, after declaring several trusts with which we are not concerned, proceeded to declare trusts of the residue in the following terms :—

"To apply the same to or for all of the following charitable purposes in such manner and in such proportions as the Trustees shall in their discretion think fit, that is to say :—

(1) Towards the maintenance or support of
   (a) Any mosque in Singapore or in any other country,
   (b) Any school for Mohammedan children in Singapore provided that the Mohammedan religion shall be taught in such school,
   (c) Any outdoor dispensary in Singapore for sick persons of the Mohammedan religion.

(2) The burial of any poor Moslem at a cost not exceeding $15/- for any such person.

(3) Contribution to needy and distressed persons of the Mohammedan religion who have suffered loss owing to fire, earthquake or other inevitable accidents.

(4) To provide yearly at the date of my death in memory of my parents and my sisters and myself a feast for poor persons of the Mohammedan religion in accordance with Mohammedan custom.

(5) At the end of the month of Ramadan in every year to distribute by way of the charity called "the Zakat" such sum (if any) as the Trustees in their discretion shall think fit".

As these trusts would infringe the rule against perpetuities if not charitable, it is necessary to decide whether the purposes (1) to (5) are charitable.

Mr. Goho, for the plaintiff-appellant who would be entitled to the whole estate if the trusts failed, submitted that they did fail on the following grounds :—

(a) That the purposes of Nos. 3 and 4 set out above are not charitable;

(b) That the trust did not show a general over-riding charitable intention in the event of one of the objects of the trust being found to be non-charitable.

With regard to (b), Mr. Goho cited many English decided cases. In the view I have taken it is not necessary to consider those cases.

As regards (a), Mr. Goho directed his main attack against No. (4) set out above.

The purpose intended by the settlor in No. (4) seems to have been both religious and philanthropic and in certain local cases trusts of a similar character have been considered.

In cases of this kind where there is a double purpose the proper course seems to be to consider the expenditure proposed and if it is to be made substantially for a charitable object, the gift is regarded as charitable, and it is not necessary to consider which motive is dominant. Of this a good example is to be found in such cases as *Kerr v. Bradley*[1], where the erection of a stained glass window was held to be a good charitable bequest in contrast to the "tomb-stone" cases. In the former case the expenditure results in something of practical or artistic value to the church where it is erected, the latter does not.

In the present case the proposed expenditure is substantially on nourishment and, as it is limited to the poor, it is a charitable expenditure if it can be considered as a form of relief of poverty. The only local case which resembles the present one is *Fatimah v. Logan*[2]. In that case (at p. 269) Hackett J. said :—

> No evidence was given to show the nature and object of these feasts and kandoories, and whether they are enjoined by the Mohammedan religion, and I am therefore left to form my opinion from the words of the Will itself, and I confess that looking at the description of the objects of the testator's bounty in the most liberal manner, it does not appear to me that they can, in any sense of the word, be called charitable. I do not see how it can be of any public utility to give feasts even when those feasts are to be enjoyed by the poor. For although it would be good charity to give alms to the poor, a feast can scarcely be regarded in the same light. On the whole I am of opinion that the gifts in the clause are not charitable, and that they are therefore void.

I think that that passage puts too much emphasis on the word "feast". While the relief of poverty constitutes one of the types of charity recognized by the law, it does not follow that every form of expenditure on the poor is charitable, e.g. a fund to pay for their admission to dog races would not be charitable, and one can imagine meals of a type that would not be charitable. In other words the relief of poverty means the provision of the more ordinary necessities of life. However, I do not consider that the mere use of the word "feast" suggests that the type of meal contemplated is of necessity one that brings it outside the scope of charity.

While this sort of relief is not an ideal or even a satisfactory method of relieving the poor in the absence of any regular system of poor relief, it cannot be said that it lacks that element of public utility which is a necessary part of charity in the legal sense. On this point I am prepared to over-rule the case of *Fatimah v. Logan.*

In the other cases where kandoories were considered, they were not restricted to the poor and therefore not charitable.

I find that all the objects of the trust are charitable which is sufficient to decide the appeal, which is accordingly dismissed with costs with the further direction that the Attorney-General is entitled to be reimbursed out of the deposit paid into Court by the plaintiff-appellant. The balance, if any, of that deposit is to be paid out to the trustees in respect of their costs. If that balance is insufficient to satisfy the costs of the trustees and they are unable to recover the amount outstanding on their costs from the plaintiff-appellant, they are to be indemnified out of the estate.

Willan, C. J. : — I agree with the judgment of the learned President of the Court in this appeal and also to over-ruling the case of *Fatimah v. Logan*[2] on the point dealt with in his judgment.

Jobling, J. : — I concur with the judgment of the learned President of the Court and have nothing to add.

Appeal Dismissed.

BASRAI BROTHERS vs. SYED IBRAHIM BIN OMAR ALSAGOFF.

[App. Civil Juris. (Brown, J.) November 21, 1947]

Increase of Rent (Restriction) Ordinance 1939 S. 8 (d) — Premises reasonably required by landlord — Control of Rent Ordinance 1947 — Interpretation Ordinance, S. 5 (d) (iv).

In this case the appellant was a tenant of certain premises which he was using as a dwelling house. The respondent landlord asked for possession on the ground that he required the premises for his own business purposes. He was also the landlord of other premises which were let and were being used as business premises. It was contended that it was unreasonable to turn the appellant out of his dwelling house when the respondent could equally well seek an order for possession of the other premises where only business or professional occupants would be affected.

Held, (1) that as the respondent had shown that the premises were reasonably required by him for his own business purposes, he had satisfied the requirement of S. 8 (d) of the Increase of Rent (Restriction) Ordinance; (2) that as the respondent had instituted the proceedings when the Increase of Rent (Restriction) Ordinance was still law, S. 5 (d) (iv) of the Interpretation Ordinance allowed the legal proceeding to be continued as if the repealing Ordinance that is, the Control of Rent Ordinance, 1947, had not been passed.

APPEAL FROM CIVIL DISTRICT COURT.

C. J. Koh for the Appellant.

John Laycock for the Respondent.

Brown, J. : — The only grounds in this appeal which are of any substance are grounds (d) and (e).

Ground (d) reads as follows :—

> The learned District Judge did not give due weight to the vital facts (i) that no alternative accommodation was offered or otherwise available to the Defendants and (ii) that greater hardship would be inflicted by granting than by refusing possession to the Plaintiff.

But, unlike the English Act, the Increase of Rent (Restriction) Ordinance, 1939, does not require that alternative accommodation should be offered, nor does it require proof that greater hardship would be inflicted by refusing an order for possession than by